

JUL 12 2016

CLD-333

MICHAEL E. KUNZ, Clerk July 6, 2016
By _____ Dep. Clerk

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **16-2531**

In re: SHAMEK HYNSON, Petitioner

05-576-2

Present: FISHER, JORDAN and VANASKIE, Circuit Judges

Submitted are:

- (1) Petitioner's application pursuant to 28 U.S.C. § 2244 and § 2255 to file a second or successive motion under 28 U.S.C. § 2255; and
- (2) Clerk's June 2, 2016 Order to Show Cause

in the above-captioned case.

Respectfully,

Clerk

MMW/JDM/clw

ORDER

The stay imposed by the Clerk on May 20, 2016, is lifted. Petitioner has filed an application under 28 U.S.C. §§ 2244 and 2255 to file a second or successive § 2255 motion. Although it is unclear from the record whether Petitioner's first § 2255 motion has been adjudicated on the merits, see Villanueva v. United States, 346 F.3d 55, 60 (2d Cir. 2003) (stating that a § 2255 motion is not second or successive unless a prior § 2255 motion was adjudicated on the merits), to the extent Petitioner requires our permission to file a second or successive § 2255 motion, his application is granted. We agree with Petitioner's position, which the government has not challenged, that in light of the Supreme Court's decisions in Welch v. United States, 136 S. Ct. 1257 (2016), and Johnson v. United States, 135 S. Ct. 2551 (2015), he has made a prima facie showing that his proposed § 2255 motion contains a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court that was previously unavailable. See 28

U.S.C. § 2255(h). The Clerk is directed to transfer the application, filed on May 20, 2016, to the United States District Court for the Eastern District of Pennsylvania.

By the Court,

s/ Kent A. Jordan
Circuit Judge



Dated: July 11, 2016

CLW/cc: Alexander C. Blumenthal, Esq.

United States Attorney Eastern District of Pennsylvania

Marcia M. Waldron

Marcia M. Waldron, Clerk

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**Motion to Vacate, Set Aside or Correct a Sentence
By a Person in Federal Custody
(Motion Under 28 U.S.C. § 2255)**

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States District Court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly you will be asked to submit additional or correct information. If you want to submit a brief or arguments you must submit them in a separate memorandum.
6. There is no filing fee for the habeas corpus motion. If you cannot pay for the other costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). **To do that you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.**
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. 28 U.S.C. § 2255 provides that there is a 1-year statute of limitations which runs from the latest of:
 - (1) the date on which the judgment of conviction becomes final;
 - (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed; if the movant was prevented from making a motion by such governmental action;
 - (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the United States Supreme Court and made retroactively applicable to cases on collateral review; or
 - (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.
9. 28 U.S.C. § 2244(b)(3)(A) provides that before you can file a second or successive habeas corpus motion in the District Court you must file a motion with the Third Circuit Court of Appeals for an order authorizing the District Court to consider your second or successive habeas corpus motion. 28 U.S.C. § 2255 provides that the second or successive habeas corpus motion must be certified by the Court of Appeals to contain:

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

10. When you have completed the form, send the original and three copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for the Eastern District of Pennsylvania
601 Market Street, Room 2609
Philadelphia, PA 19106

11. **CAUTION:** You must include in this motion all of the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all of the grounds in this motion, you may be barred from presenting additional grounds at a later date.
12. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District EASTERN DISTRICT OF PENNSYLVANIA
Name (under which you were convicted): Shameek Hynson		Docket or Case No.:
Place of Confinement: Big Sandy USP		Prisoner No.: 13571-052
UNITED STATES OF AMERICA V.		Movant (include name under which convicted) Shameek Hynson

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: _____

U.S. District Court for the EDPA

(b) Criminal docket or case number (if you know): 05-576
2. (a) Date of the judgment of conviction (if you know): 9/21/07

(b) Date of sentencing: 8/10/09
3. Length of sentence: 480-life(includes 120 consec)
4. Nature of crime (all counts): conspiracy to deliver to deliver crack
using or carrying a firearm during a drug trafficking offense
two counts of tampering with a witness
felon in possession of a firearm

5. (a) What was your plea? (Check one)

(1) Not guilty ☒

(2) Guilty ☐

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to? _____

UNKNOWN AT THIS TIME*

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

*This motion challenges a sentence rendered unconstitutional by the recent Supreme Court decision in *Johnson v. United States*, 135 S. Ct. 2552 (2015). The Federal Community Defender Office was appointed to litigate the *Johnson* claim only. Information not applicable to the *Johnson* claim is unknown at this time.

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? *UNKNOWN AT THIS TIME** (see p. 3)
Yes ☐ No ☐
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: Third Circuit Court of Appeals
- (b) Docket or case number (if you know): 14-2884
- (c) Result: affirmed
- (d) Date of result (if you know): 10-6-15
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: UNKNOWN AT THIS TIME* (see p. 3)
- _____

- (g) Did you file a petition for certiorari in the United States Supreme Court? *UNKNOWN AT THIS TIME** (see p. 3)
Yes ☐ No ☐
If "Yes," answer the following:
- (1) Docket or case number (if you know): _____
- (2) Result: _____
- _____

- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____
- _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?
Yes ☒ No ☐
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: United States District Court for the Eastern District of Pennsylvania
- (2) Docket or case number (if you know): 12 cv 6979

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Pursuant to the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2552 (2015), Defendant's sentence is unconstitutional.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

e.g., Defendant was sentenced under the residual clause of the Armed Career Criminal Act ("ACCA"),
which was declared unconstitutionally vague.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

Relief was unavailable until *Johnson v. United States*, 135 S. Ct. 2552 (2015), was decided.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

[illegible]

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

[illegible]

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Ground One: relief was unavailable until *Johnson v. United States*, 135 S. Ct. 2552 (2015), was decided.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: UNKNOWN AT THIS TIME* (see p. 3)

(b) At the arraignment and plea: UNKNOWN AT THIS TIME* (see p. 3)

(c) At the trial: UNKNOWN AT THIS TIME* (see p. 3)

(d) At sentencing: UNKNOWN AT THIS TIME* (see p. 3)

(e) On appeal: _____

(f) In any post-conviction proceeding: UNKNOWN AT THIS TIME* (see p. 3)

(g) On appeal from any ruling against you in a post-conviction proceeding: UNKNOWN AT THIS TIME* (see p. 3)

16. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐ UNKNOWN AT THIS TIME* (see p. 3)

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

17. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This motion is timely pursuant to 28 U.S.C. § 2255(f)(3), which provides for a one-year limitations period to run from "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." The Supreme Court decided *Johnson* on June 26, 2015, and this motion is filed within a year of that date.

* 28 U.S.C. § 2255(f), provides that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of --

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: _____

_____ or any other relief to which movant may be entitled.

/s/ Alexander C. Blumenthal

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____ .
(month, date, year)

Executed (signed) on _____ (date)

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

